

Memorandum

July 11, 2006

TO: MWAQC Technical Advisory Committee

FROM: Jeff King, COG/DEP

Subject: Background on Contingency Measures Requirement

This memorandum provides background information on contingency measure requirements for the 8-hour ozone SIP.

Statutory Language

CAA 172(c)(9) "Contingency measures. Such plan shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator."

CAA 182(c)(9) "Contingency provisions. In addition to the contingency provisions required under section 172(c)(9), the plan revision shall provide for the implementation of specific measures to be undertaken if the area fails to meet any applicable milestone. Such measures shall be included in the plan revision as contingency measures to take effect without further action by the State or the Administrator upon a failure by the State to meet the applicable milestone."

EPA Regulations

"Under the CAA, 8-hour ozone nonattainment areas subject only to subpart 1, as well as those classified under subpart 2 as moderate, serious, severe, and extreme must include in their SIPs contingency measures consistent with sections 172(c)(9) and 182(c)(9), as applicable. Contingency measures are additional controls to be implemented in the event the area fails to meet a RFP milestone or fails to attain by its attainment date. These contingency measures must be fully adopted rules or measures which are ready for implementation quickly upon failure to meet milestones or attainment." (Phase 1 8-hour Ozone Rule Page 71650)

"We are adopting the approach taken in our proposal. All subpart 1 and subpart 2 areas other than marginal areas are required to adopt contingency measures to be implemented in the event of failure to meet a RFP milestone or to attain the 8-hour ozone NAAQS. The contingency measures SIP should accompany the attainment demonstration SIP required for submission by June 15, 2007. It should be noted that the CAA requires

States to identify contingency measures that will go into effect without further action on the part of the State or EPA. We believe this language means that contingency measures should be adopted regulations but also recognize that some additional State or local action may be necessary (such as notification of sources) before implementation." (8-hour Ozone Rule: Phase 1)

"Contingency measures are intended to achieve reductions over and beyond those relied on in the attainment and RFP demonstrations. Nothing in the statute precludes a State from implementing such measures before they are triggered." (8-hour Ozone Rule: Phase 1)

EPA Guidance

"The CAAA preamble requires that the contingency measures generally must provide reductions of 3 percent of the emissions from the adjusted base year inventory. The reductions must be achieved in the year following that in which the failure has been identified. Three percent represents one year's worth of reductions under the post 1996 rate-of-progress requirement. EPA has determined that States must adopt a minimum of 0.3 percent in VOC measures of the 3 percent contingency measure requirement to be legally defensible. The minimum contingency plan could contain up to 2.7% of the baseline NOx emissions." (appendix D of the Post-1996 Rate of Progress Plan and Attainment Demonstration Guidance).

"For milestone failures, EPA only requires that contingency measures be implemented to compensate for the degree of failure. 2 % => 2%. For attainment failures, EPA requires all contingency measures be implemented." (page 50 EPA Guidance on the Post-1996 Rate of Progress Plan and Attainment Demonstration).

"The SIP should clearly state the trigger mechanism, a schedule of implementation of the measures, and an indication that the measures will be implemented with no further action by the State or EPA." (page 49 EPA Guidance on the Post-1996 Rate of Progress Plan and Attainment Demonstration).

On page 50, EPA writes: "States could adopt measures that are required for the next higher classification to fulfill their contingency measures requirement. The cutpoints for stationary or area sources could also be lowered for already adopted control measures in the control strategy."